

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LANE-COOS-CURRY-DOUGLAS COUNTIES BUILDING &
CONSTRUCTION TRADES COUNCIL, AFL-CIO; CAR-
PENTERS LOCAL UNION No. 1273, UNITED BROTH-
ERHOOD OF CARPENTERS & JOINERS OF AMERICA,
AFL-CIO; CONSTRUCTION & GENERAL LABORERS
LOCAL No. 85, INTERNATIONAL HOD CARRIERS,
BUILDING & COMMON LABORERS' UNION OF AMERI-
CA, AFL-CIO; and PLUMBERS & STEAMFITTERS
LOCAL No. 481, UNITED ASSOCIATION OF JOURNEY-
MEN & APPRENTICES OF THE PLUMBING & PIPE
FITTING INDUSTRY OF THE U.S. & CANADA. AFL-
CIO, RESPONDENTS

On Petition for Enforcement of An Order of the
National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

FILED

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No. 20291

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v.

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**On Petition for Enforcement of An Order of the
National Labor Relations Board**

**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD**

JURISDICTION

This case is before the Court upon the petition of the Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*),¹ for enforce-

¹ Pertinent provisions of the Act are set forth *infra*, pp. 16-18.

ment of its order, issued against respondents on March 10, 1965 (R. 28-38, 44-45),² and reported at 151 NLRB No. 63. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred during a labor dispute between respondents and Ramsay-Waite Co., Inc., (herein called Ramsey) an employer doing business in interstate commerce in Eugene, Oregon. No issue of the Board's jurisdiction is presented.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

The Board found that respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging individuals employed by neutral and secondary employers to cease performing services, and by threatening, coercing, and restraining the neutral and secondary employers, all with an object of forcing those employers to cease doing business with Ramsey. The evidence upon which the Board based its findings is summarized below.

A. *Respondent Plumbers' conduct at the Bank jobsite*

Respondents Carpenters, Laborers, and Plumbers are constituent members of respondent Council (R. 11).

² References designated "R." are to Volume I of the record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of testimony as reproduced in Volume II of the record. Whenever in a series of references a semicolon appears, those preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

Ramsey installs irrigation and sprinkling systems. Ramsey is a nonunion contractor involved in a labor dispute with the Plumbers and the Council, Ramsey having rejected their request for a union contract and his employees having rejected them as their bargaining representative (R. 11, 21-22, 29; Tr. 12). In August 1963 Ramsey was performing a contract for the United States National Bank ("Bank") at its building in Eugene. Gale M. Roberts Co. ("Roberts") is a general contractor who was also engaged at the Bank. Roberts' employees are represented by respondents. Roberts' subcontracted his plumbing and steam-fitting work to Stimson Plumbing & Heating Co. ("Stimson"), a plumbing subcontractor whose employees are represented by respondent Plumbers (R. 30; Tr. 35-36).

On August 20, 1963, Plumbers' business manager, Mark Carmickle, came to the jobsite and asked a Stimson plumber, employee Raymond Quick, if Ramsey employees were on the job. When Quick said they were, and indicated their location, Carmickle left (R. 30; Tr. 48-51, 55-56). Carmickle returned shortly and told Quick that some of the labor officials were going to meet with Roberts and Ramsey that afternoon. Carmickle did not state the purpose of the meeting, but Quick "knew what it was for" (R. 30; Tr. 51-52). After lunch Quick and the other Stimson employee on the job, Warner Dallas, walked off the job (R. 30; Tr. 52-54).

Sometime that same afternoon Carmickle called the Bank, and spoke to Assistant Cashier and Loan Officer Arthur Pullen. Carmickle told Pullen that he had

"pulled the men off the job . . . because of the employment of a non-union firm . . . Ramsey." Later that afternoon Pullen passed this information on to the Bank's building and planning manager, Stuart Kidd (R. 30; Tr. 42-44).

The next morning Carmickle called Assistant Cashier Pullen again, and told him that as the "non-union personnel" were not yet off the job, the "Union men" would not return (R. 30; Tr. 44-46). That morning, however, Bank Manager Kidd met with Taylor Ramsey at the jobsite and directed him to remove Ramsey's employees. Ramsey did so (R. 30; Tr. 31-38). A few minutes later Kidd encountered Carmickle at the site. Kidd told him that he had done what was necessary "to eliminate the confusion at the job," and hoped that Stimson's "plumbers would return immediately." Within half an hour they were back on the job (R. 30; Tr. 38-40).

B. Respondents' conduct at the City Hall jobsite

In 1962 Roberts was awarded a contract for construction of a city hall in Eugene. He subcontracted the installation of a sprinkler system to Ramsey (R. 31; Tr. 17-18, 22-23, 57-58).

In September 1963, several months before Ramsey began work (and a few weeks after respondents had forced Ramsey's removal from the Bank job, as described in section A, above), Business Manager Carmickle and the secretary of the Council, Jens Horstrup, talked to Roberts concerning the use of Ramsey on the City Hall job. The union officials told Roberts that Ramsey was not hiring union men and that

he was refusing to sign a contract with the Plumbers. They sought Roberts' "help," but the latter stated he had a binding contract with Ramsey (R. 31; Tr. 58-60, 141-142). About a month later Roberts sought out Carmickle and suggested a means for Ramsey working on the site without Carmickle objecting. Roberts proposed that the dispute between the Plumbers and Ramsey be settled by Ramsey agreeing to hire "all Union help." Carmickle rejected the proposal (R. 31; Tr. 60-62).

On January 13, 1964, Ramsey's employees began work at the City Hall site. Carmickle, Council Secretary Horstrup, and one or two other unidentified union officials came to the site. They again complained to Roberts about the presence of Ramsey. Roberts, however, reiterated that he had a binding contract with Ramsey. Horstrup said he would "think about" the matter. Carmickle said he was going "to do something about it." The union officials then left (R. 31; Tr. 62-65).

The next day, January 14, 1964, a picket appeared at the City Hall site, carrying a sign which read (R. 13, 21, 32; Tr. 24-25, 65-66):

RAMSEY-WAITE CO. WORKING CONDITIONS less
than enjoyed by Plumbers Union # 481. No
other dispute exists on this job

Business Agent Carmickle requested and obtained the Council's approval of the Plumbers' picketing (R. 32; Tr. 129-130).

Roberts' employees, members of either the Laborers or Carpenters, gathered at the jobsite after seeing

the picketing. On behalf of the laborers, employee and member Robert Magee telephoned Laborers' Business Agent, Kenneth Barton, for advice. Barton told Magee that the picketing was "informational" and that any decision to leave work was up to the individual (R. 32; Tr. 71-73, 87-89). The laborers started to work, but grew uneasy and called Barton again. He told them to come to his office, where they all went. Council Secretary Horstrup was present. Horstrup told the laborers that any "decision" was left to them and that the union would not take any action against anyone who went through the picket line. The laborers then went back to work (R. 32; Tr. 73-76, 89-91).

As the carpenters were gathered at the site, Glen Randall, Carpenters business representative and Council president, appeared. The carpenters asked him what they should do. Randall replied that the picketing was "legal," and that he could not tell them what to do, that they should decide for themselves. After some discussion among themselves, the carpenters went to work (R. 32; 66-67, 102-104, 111-113, 141).

Because Roberts' employees had continued to work behind the picket line, respondents withdrew it at about noon, January 15 (R. 13, 21, 32). The next morning, January 16, Randall told Roberts' superintendent, Jay Maycumber, that he wanted to meet with the carpenters that afternoon, after work. Maycumber, a Carpenters' member, so notified the men (R. 32; Tr. 116-119). The laborers learned of this, and after work went to Business Agent Barton's office. Barton took them to the room in the union hall where the meeting was about to open. Already present when

Barton and the laborers arrived, were Roberts' carpenters, Carpenters' Business Representative and Council President Randall, and Joe Willis. Willis is secretary of the Council's parent body, the Oregon State Building Trades Council (R. 32; Tr. 77-78, 82-84, 91-93, 96, 143).

After explaining why a tape recorder would be on during the meeting, Randall spoke to the employees concerning the picketing. He told them that the picket line would be re-established the next morning. Randall stated that he had a list of all the carpenters on the job and that if the men did not cross the picket line, the list would be forgotten. He also stated that nothing would be done about the carpenters who had worked throughout the picketing on January 14 and 15, if they now refused to work behind the newly established picket line. Randall reminded the employees of the provisions in the Carpenters' constitution providing for "fines" and other punishment for disregarding a picket line, and that he was obligated to bring "charges" with the Council for violations thereof (R. 33; 78-80, 93-94, 104-107, 113-114, 119-122, 130-135).

Laborers Business Agent Barton then reminded the laborers that their constitution provided for punishment of members who disregarded a picket line. Barton added that any accused member had a right to a "trial" (R. 33; Tr. 144-149).

In addition, Willis, secretary of the State Council, told the employees that he would not cross the picket line and that he thought Randall had been "pretty nice" for not seeking Council punishment for those

who had crossed the line of January 14 and 15 (R. 33; 80, 94, 114-115, 143).

The next morning the picketing recommenced, and Roberts' employees remained away from work. They did not return until 2 weeks later, when Ramsey's employees left the City Hall jobsite. Officials of both the Carpenters and the Council acted as pickets during the 2 week period ³ (R. 33; Tr. 81, 84-85, 94-95, 107, 115).

II. The Board's Conclusions and Order

The Board found that respondent Plumbers induced and encouraged Stimson's employees to withhold their services, and threatened, coerced and restrained the Bank, all with an object of forcing the Bank to cease doing business with Ramsey at the Bank jobsite, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act (R. 31, 44-45). The Board further found that respondents induced and encouraged Roberts' employees to withhold their services, and coerced and restrained Roberts, all with an object of forcing Roberts to cease doing business with Ramsey at the City Hall jobsite, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act (R. 33-35, 44-45). The Board's order requires respondents to cease and desist from the

³ After issuing an unfair labor practice complaint against respondents, the Board's Regional Director sought interim relief in the federal district court, pursuant to Section 10(1) of the Act. On April 7, 1964, after hearing, the district court in Oregon granted a temporary injunction. Before the Board the parties waived hearing and stipulated that the Trial Examiner would consider as the evidence the testimony in the district court proceeding (R. 26-28).

unfair labor practices found and to post the customary notices (R. 34-38, 45).

ARGUMENT

Substantial Evidence Supports the Board's Finding That Respondents Violated Section 8(b)(4)(i) and (ii)(B) of the Act

Section 8(b)(4)(i) and (ii) (B) of the Act, as amended in 1959 (see, *infra*, pp. 16-17) provides that a union may not "induce or encourage" any employee, or "threaten, coerce or restrain any person" with the object of effecting a secondary boycott. *N.L.R.B. v. District Council of Painters No. 48 and Paint Makers Local Union No. 1232*, 340 F. 2d 107 (C.A. 9), cert. denied, 381 U.S. 914. The uncontradicted evidence, set out *supra*, pp. 2-8 amply supports the finding of the Board that respondents violated both these prohibitions. Initially, the Plumbers violated the Section by the conduct of Business Manager Carmickle when he learned that Ramsey, the primary employer who had rejected the Plumbers' request for a contract and whose employees had rejected the Plumbers, was engaged at the Bank jobsite alongside union contractors. Thus, Carmickle told Quick, an employee of Stimson, that because of Ramsey's presence union officials were meeting at noon that day. After lunch, Quick and the other Stimson employee present walked off the job, Quick having surmised the purpose of the union meeting Carmickle referred to. Any doubt that Carmickle had instigated the walkout was dispelled by Carmickle's calls to the Bank that afternoon and the following morning. For Car-

mickle told the Bank that he had "pulled the men off the job." Moreover, the plain objective of this inducement of a work stoppage was to bring pressure on the Bank to cease doing business with Ramsey in furtherance of the Plumbers' dispute with Ramsey. Carmickle thus told the Bank that the reason for the stoppage was the presence of Ramsey's "non-union personnel," and within a half-hour after the Bank persuaded Ramsey to remove his employees, Stimson's plumbers returned to work. The Plumbers' violation of Section 8(b)(4)(i)(B) of the Act is, therefore, manifest. See, e.g., *N.L.R.B. v. District Council of Painters No. 48 and Paint Makers Local Union No. 1232*, *supra*, 340 F. 2d at 110-111; *N.L.R.B. v. Local 294, Teamsters*, 298 F. 2d 105, 106-107 (C.A. 2); *N.L.R.B. v. Plumbers' Union of Nassau County*, 299 F. 2d 497, 500-501 (C.A. 2); *N.L.R.B. v. Highway Truckdrivers & Helpers, Local 107*, 300 F. 2d 317, 319-320 (C.A. 3). Moreover, the application of such pressure against the Bank also falls squarely within the proscription of subparagraph (ii), the purpose of which is to foreclose threats to neutral employers of such "labor trouble and other consequences,"⁴ and to prohibit carrying out of such threats by means of a "strike or other economic retaliation."⁵ Cases cited, *supra*. See, in addition, *N.L.R.B. v. International Hod Carriers, Local 1140*, 285 F. 2d 397, 402-403 (C.A. 8), cert. denied, 366 U.S. 903.

⁴ 105 Cong. Rec. 15532, II Leg. Hist. 1568; see 105 Cong. Rec. 8874, II Leg. Hist. 1750.

⁵ 105 Cong. Rec. 14347, 15544-15545, II Leg. Hist. 1523, 1581.

The Board had ample warrant for rejecting respondents' contention that Stimson's employees quit work on their own individual action. Though Quick testified that he left out of scruple against working with employees "receiving less wages" for the same kind of work (R. 30), Quick, as the Board noted, was not concerned about the presence of Ramsey's non-union employees until Carmickle raised the matter and implied union action against it. As this Court has recognized, "'the words 'induce or encourage' are broad enough to include in them every form of influence and persuasion.'" [citation omitted]. *N.L.R.B. v. District Council of Painters No. 48 and Paint Makers Local Union No. 1232*, *supra*, 340 F. 2d at 111. Moreover, by his own declaration that he had "pulled the men from the job" Carmickle demonstrated that it was his actions that brought about the work stoppage. In these circumstances, the Board properly placed little weight on Quick's testimony avowing wholly individual action on his part. Cf. *N.L.R.B. v. Donnelly Garment Co.*, 330 U.S. 219, 228-231; *Hendrix Mfg. Co. v. N.L.R.B.*, 321 F. 2d 100, 105 (C.A. 5).

Respondents resorted to unlawful secondary pressures in the second instance, by their conduct when they discovered that Roberts had subcontracted work to Ramsey at the City Hall jobsite.⁶ Thus, when

⁶ The Board, contrary to respondents' assertion (R. 9, 19, 22-23), acted well within its broad discretion in consolidating the case against the Plumbers at the Bank site with the case against all the respondents, including the Plumbers, at the City Hall site. The Plumbers are a common respondent, and

Roberts rejected the repeated requests of the Plumbers and the Council to cancel his contract with Ramsey, the Plumbers, with the Council's official sanction, began picketing the job site. Roberts' carpenters and laborers hesitated crossing the picket line, but uniformly did so when in answer to their inquiries officials of the Carpenters, Laborers, and Council told them the decision was up to them. Significantly, the secondary employees' unanimous decision to continue working led the Plumbers and Council to withdraw the picket line on January 15.

Respondents, however, immediately took action to assure that Roberts' employees would cease working. The employees were thus assembled in the union hall immediately after work on January 16 and told by top officials of the Carpenters, Laborers, Council, and the parent State Council, that the Plumbers' picket line would be re-established in the morning. The employees were reminded that the unions' constitutions provided sanctions for disregarding a picket line. They were further told that an asserted "list" of those

because of a dispute with Ramsey resorted to secondary activity because of his presence at both sites, enlisting the Council and other respondents (fellow Council members) in the activity at the City Hall site. Roberts is a neutral employer involved at both sites, and Ramsey is the charging party in all the charges filed against respondents. Plainly, these facts establish common parties and common issues of fact and law. Moreover, respondents have not suggested how they were prejudiced by the consolidation. *N.L.R.B. v. United Mine Workers of America, District 31, et al.*, 198 F. 2d 389, 390 (C.A. 4), cert. denied, 344 U.S. 884. Accord: *N.L.R.B. v. Local Joint Executive Board*, 301 F. 2d 149, 155-156 (C.A. 9).

who had worked behind the picketing would be forgotten if the new picket line was honored, but that those who crossed this line would be subject to "fines" and "punishment." The admonition was effective, as Roberts' employees stayed away from the jobsite and the picket line for 2 weeks, at which time Ramsey's employees left. Under settled law, respondents' picketing and threats to invoke internal union discipline to induce work stoppages among secondary employees to bring pressure on a secondary employer (Roberts) to cease doing business with the primary (Ramsey), are violative of Section 8(b)(4)(i) and (ii)(B) of the Act. *N.L.R.B. v. Local 3, I.B.E.W.*, 325 F. 2d 561, 563 (C.A. 2), and cases cited therein. Accord: *N.L.R.B. v. Local 751, Carpenters*, 285 F. 2d 633, 640, 641 (C.A. 9); *Elliott v. Amalgamated Meat Cutters, etc.* 91 F. Supp. 690, 697 (W.D. Mo.), appeal dismissed, 189 F. 2d 965 (C.A. 8); *Hull v. Sheet Metal Workers' International Association, AFL-CIO, et al.*, 41 LRRM 2812, 2820 (D.C. N. Ohio); *Truck Drivers Local Union 728, Teamsters v. N.L.R.B.*, 265 F. 2d 439, 442-443 (C.A. 5), cert. denied, 361 U.S. 917; *Roanoke Building & Construction Trade Council, AFL-CIO, et al. (The Kroger Co.)*, 117 NLRB 977, 980; *Int'l Ass'n of Heat & Frost Insulators and Asbestor Workers, et al. (Speedline Mfg. Co.)* 137 NLRB 1410, 1411. See also, *Local Union No. 789, Int'l Hod Carriers, et al. (H. E. Doyle)*, 125 NLRB 571, 573.

Accordingly, as regards the City Hall jobsite, the Board properly rejected respondents' contention that they established a picket line, at a common situs,

which was aimed solely at Ramsey and his employees and that they merely gave Roberts' employees the "facts" in response to their "confusion" as to whether to cross it. Given an opportunity, Roberts' employees did make an "individual decision," and initially continued to work in spite of the picketing. Respondent Plumbers thereupon re-established the picket line and by resort to threats of union discipline each of the other respondents induced Roberts' employees to engage in a work stoppage. Thus, to force Roberts to cease doing business with Ramsey, "there was a deliberate attempt to produce collective action by the [respondents] acting as a union but termed, for the purpose of subterfuge, individual action." *Truck Drivers Local Union 728, Teamsters v. N.L.R.B.*, *supra*, 265 F. 2d at 443. In short, respondents' assertion is foreclosed by their overt and joint effort to "enmesh . . . secondary employers and employees in the dispute." *N.L.R.B. v. Highway Truckdrivers & Helpers, Local 107*, *supra*, 300 F. 2d at 321-322. See also, *Retail Fruit & Vegetable Clerks Union Local 1017 v. N.L.R.B.*, 249 F. 2d 591, 596-598 (C.A. 9); *N.L.R.B. v. Western States Regional Council No. 3, et al.*, 319 F. 2d 655, 659 (C.A. 9); *N.L.R.B. v. Local Union No. 751, Carpenters*, 285 F. 2d 633, 639-640 (C.A. 9); *National Maritime Engineers Beneficial Assn. v. N.L.R.B.*, 274 F. 2d 167, 170 (C.A. 2); *I.B.E.W. v. N.L.R.B.*, No. 19084 (C.A. D.C.) decided July 16, 1965 (59 LRRM 2767).

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.⁷

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October 1965.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rule 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

Marcel Mallet-Prevost
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⁷ Respondents clearly demonstrated a proclivity for bringing unlawful pressures on any secondary employers who attempt to engage Ramsey at any jobsite. Therefore, the Board, contrary to respondents' assertion, was warranted in including a provision in the order which seeks to deter respondents in the immediate future from bringing such pressures on any secondary employer who seeks to do business with Ramsey. *I.B.E.W. v. N.L.R.B.*, 341 U.S. 694, 698, 699, 705-706; *N.L.R.B. v. International Union of Operating Engineers, Local 571*, 317 F. 2d 638, 643-644 (C.A. 8); *N.L.R.B. v. Local 38, IBEW*, 339 F. 2d 197, 200 (C.A. 6).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

* * * *

UNFAIR LABOR PRACTICES

* * * *

Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: . . . (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make un-

lawful, where not otherwise unlawful, any primary strike or primary picketing; . . .

* * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with re-

spect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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